

**Ep #172: Repeal and Replace Tanked in The Senate.  
Now what? – with Jessica Waltman**



**Full Episode Transcript**

**With Your Host**

**David Saltzman**

**[The ShiftShapers Podcast](#) with David Saltzman**

## **Ep #172: Repeal and Replace Tanked in The Senate.** **Now what? – with Jessica Waltman**

David: Repeal and Replace didn't even come up for a vote in the Senate. So now what happens? And what do you need to know to advise your clients? We'll find out on this episode of ShiftShapers.

Change either paralyzes, or energizes. The choice is yours. You're listening to the ShiftShapers Podcast. You're about to learn firsthand from businesses and entrepreneurs who have successfully shaped the shifts in their industries. Get ready to become the change that you want to see. Here's your host and chief transformation strategist, David Saltzman.

David: This episode of the ShiftShapers Podcast is brought to you by Captivated Health, a captive insurance arrangement that helps small and mid-market companies escape the fully-insured marketplace and deliver stability, control, and savings without watering down employees' benefits or increasing their premium share. If you have clients in the educational institution or the engineering vertical, go to our website at [captivatedhealth.com](http://captivatedhealth.com), or click on the company logo on the ShiftShapers website.

David: It is time for our quarterly visit with Jessica Waltman. Jessica, as listeners know, is the Principal at Forward Health Consulting, but she's also our resident expert on all things legislative, political, and regulatory. By way of setting the stage, we are recording this on Tuesday, July 18, 2017. We never do that, but it's important, especially today, because this morning, Senate Majority Leader Mitch McConnell pronounced healthcare reform dead in the Senate. We've got loads to talk to Jessica about, but first, let's say welcome.

Jessica: Hi, David. It's great to be back on the podcast.

David: Always great to have you share your wisdom with us. We can get into the legislative stuff before, but let's level-set and talk about the predicate. What is the actual state of PPACA in whatever markets you want to talk about?

**[The ShiftShapers Podcast](#) with David Saltzman**

## Ep #172: Repeal and Replace Tanked in The Senate.

### Now what? – with Jessica Waltman

Jessica: Well, I think that most of your listeners understand this very well, but perhaps their clients don't, their mother might not, their neighbor that's asking them about it. The ACA is a thousand-page law. It has about 40,000 pages of related regulations. It has huge sections related to Medicare, Medicaid, the employer market, other programs. But what they're talking about when they talk about "the ACA in a state of collapse" on television is of course the individual market, which covers about 7% of the US population. The individual market in a number of states obviously is suffering from a lack of competition, particularly on the exchanges, because there's also a difference between the individual market generally and individual market insurers that want to participate in the exchanges.

When they say Obamacare is failing or the ACA is failing, I think what they're really referring to is the individual market. It's I think very important to keep making that distinction, because agents and brokers that may be listening to this or other people in the industry, you may be working with employers, employees that are hearing, "Every health insurer's leaving our market," and that's probably not really true for them.

David: With that said, the question is, what the heck just happened?

Jessica: The House and the Senate made a choice a while ago that they would not try and work with any Democrats at all and they would try and create this Repeal and Replace legislation using the constraints of the budget reconciliation, which really limited what they could actually tackle. As we talked about before, the legislation that the House passed and the Senate considered really did not address most aspects of the ACA, and it really only did things that had to do with dollars and cents. For example, the employer market. It said it repealed the employer mandate. It didn't. It just zeroed out the penalty. It was a very constrained piece of legislation.

Since it was a setup for a comprehensive tax reform, they decided to include a whole big component of it that really had nothing to do with the ACA. It was a reformat of Medicaid spending in the future. We had a very limited bill that did not

[The ShiftShapers Podcast](#) with David Saltzman

## Ep #172: Repeal and Replace Tanked in The Senate.

### Now what? – with Jessica Waltman

fully repeal the ACA and made massive changes to Medicaid, and it really exposed a big divide in the Republican Caucus. No one really liked it. It wasn't doing what they had promised to do for the past seven years, and it really never could. It's not really surprising that it blew up in their faces.

Now we are where we are. We have a House-passed legislation. They went out on a limb there. We have the Senate unable to bring a reconciliation bill that addresses the ACA even to the floor, even to consider it. They did not have the votes that they needed to bring it, after trying two times to revise the legislation. Then, today, Senator McConnell said, "Well, we're going to bring a clean repeal bill to the floor. We're going to just repeal the ACA flat out and give ourselves two years to come up with a replacement, because we cannot come up with replacement language now." They weren't talking about just making tweaks to it like the original bill did. They were talking about repealing the entire thing.

As of when we're recording, at least three Senators have said that they will not play a game of chicken over the next two years and try and craft a new replacement bill, so they will not allow Senator McConnell to even bring that measure to the floor of the Senate. Right now, they're at a stalemate. They cannot bring anything up, and they're going to have to regroup.

David: Was that in part a way to build a firewall for the midterms?

Jessica: Yeah, probably. He needs to get people on the record. Then, also, obviously there's a huge amount of public backlash. This situation has made the ACA more popular than ever, because one of the interesting things that I think the Republicans did was they really didn't communicate why they were doing this or any of the advantages or where any of the problems lie. Any of the good improvements that were their bill, some of the changes to HSAs or ...

Just for an example, the ACA raised the limit, the increase in tax on the amount a person can deduct from their individual taxes if they have catastrophic medical expenses. It used to be

[The ShiftShapers Podcast](#) with David Saltzman

## **Ep #172: Repeal and Replace Tanked in The Senate.**

### **Now what? – with Jessica Waltman**

7.5% of the AGI, and the ACA raised it up to 10%. This was going to put it back to 7.5%. Now, I have a child with a catastrophic medical condition, so we have really high medical expenses, so for me this was really good news. I really saw that 2.5% tax increase as a tax against children or families with super high-cost medical expenses.

Instead of making a big deal and saying, "Hey, the ACA raised taxes on all of these poor families with really ill children, and we're going to roll it back," the Republicans said nothing. They didn't make any big deal about that at all. There were lots of provisions in both versions of the bill that could've helped people. They didn't do any PR campaign about any of those at all. Now they're really stuck.

They've got the ACA super popular, and they have to answer to their constituents that really do not understand why in the world they were considering this to begin with. But they also have to answer to some of the mega donors in the Republican Party. A lot of people know of the Koch brothers, but there are lots of other people like the Koch brothers but less famous that contribute millions and millions of dollars to super PACs that help Republicans up and down the ballot in the states, and they all pretty much came together about two weeks ago at a meeting and said, "We're not going to give you any more money if you do not do a full repeal."

By holding this vote where he tries to flat out repeal the ACA and then do the two-year delay, Mr. McConnell does a bunch of things. He lets people go on record saying that they do oppose that, if they're in a district where that would help them. It lets him say to the mega donors, "I held a vote. I couldn't get it done. It's not my fault. You can blame the Democrats or these moderate Republicans or whoever you want." It also gives him a stopping point so that he can move on to other things, because we have to raise the debt ceiling. They would like to do comprehensive tax reform. They have to do the appropriations bills. They have a very short legislative timeline left, so he needs to move on to something else.

**[The ShiftShapers Podcast](#) with David Saltzman**

## Ep #172: Repeal and Replace Tanked in The Senate.

### Now what? – with Jessica Waltman

David: You've been around the Hill a lot and you know an awful lot of what goes on there, both the part the public sees and the stuff behind the scenes. They did a clean repeal back in 2015. Obviously, as you just said, they've already lost three votes, but a lot of the folks who voted for that in 2015, knowing full well that it was going to be vetoed if it got to the President's desk, aren't going to vote for it now. Is it a lack of political courage? Is it politics? Is it policy? What's the driving factor there?

Jessica: There's a couple of things. First of all, several of the people ... You have Susan Collins, who did not vote for that in 2015. I think Lisa Murkowski did. The three people so far that have said that they won't for this are Shelley Moore Capito, Lisa Murkowski, and Susan Collins. Susan Collins didn't vote for it in 2015. Shelley Moore Capito was not in the Senate then, so she doesn't have a record. Lisa Murkowski maybe has flip-flopped, but she doesn't really have to worry. She is in a very safe seat in Alaska, and Alaska stood to lose a lot.

One of the differences that I think other people that may come stand behind them, and people like Bob Corker, Tom Cotton, that were concerned about this idea, was this isn't a straight repeal. This would be a repeal with a two-year delay, so there would be no replacement right away. When they voted in 2015, they voted to replace it with a bill that had been largely authored by now HHS Secretary Tom Price. Was that a great replacement? Who's to say? But they had something to go right away. This would be repeal with a big question mark.

That would put not just the individual market, which is already in trouble, in peril. It would also put employer markets, people in Medicaid, people in CHIP, Medicare ... The ACA is a thousand-page law. It made all kinds of changes to Medicare programs, other things that really are not problematic right now. To have that all turned back possibly in two years would really send providers, insurers, employers, insured individuals into chaos.

I think that their excuse is going to be, or their rationale is going to be, that we cannot just go for two years and have an unknown. The market ... It would just be too destabilizing.

[The ShiftShapers Podcast](#) with David Saltzman

## **Ep #172: Repeal and Replace Tanked in The Senate.**

### **Now what? – with Jessica Waltman**

David: And now a word from our sponsor.

Captivated Health is a single-source solution for your clients and prospects in the education and engineering verticals. The founders of Captivated Health have 35 years' experience working with healthcare and benefit clients, and over that time they've developed a keen understanding of the unique problems mid-market clients experience. Frustrated by a lack of control, the unpredictability of ever-increasing healthcare costs, and the pressures and regulations of the Affordable Care Act, these groups have been adrift in the fully-insured commercial marketplace. Until now. Captivated Health has built a program that solves those problems, and does so with virtually no disruption to employees, while saving clients millions of dollars.

We wanted you to be among the first to know that Captivated Health is building a national distribution partner network, so you can bring this cutting-edge solution to your education and engineering clients that you advise. To learn more about Captivated Health solutions, go to our website at [www.captivatedhealth.com](http://www.captivatedhealth.com), or click on our logo on the ShiftShapers website.

But in the meantime, they need to reauthorize CHIP. What's going on with that?

Jessica: The CHIP program needs to be reauthorized by September 30th. They already talked just cleanly reauthorizing it, which is what they've done the last few times that they needed to do that, so just extending the same amount of money. But it is a healthcare bill that needs to go through the related committees, and so it is possible ... Going back to what we talked about in the very beginning of this podcast, what is really in trouble here? It's the individual market, and particularly the exchange individual market.

Senator Lamar Alexander, who chairs the Health, Education, Labor and Pensions Committee in the Senate, has a bill that he introduced this spring, kind of a fallback measure, that would allow individuals who live in a state where there are no carriers

**[The ShiftShapers Podcast](#) with David Saltzman**

## Ep #172: Repeal and Replace Tanked in The Senate.

### Now what? – with Jessica Waltman

in the individual market exchange the ability to use their tax credit money off-exchange, and it would have provisions for those who only have one or two carriers available. He said today that as soon as Senator McConnell holds this vote to proceed on a motion to repeal and delay for two years and that fails, which they would like to do very quickly, his immediate plan is to hold a hearing and start regular order on some individual market fixes.

My guess is that they may use the CHIP reauthorization or another moving vehicle in the short term to make some immediate market fixes. They may also address the issue of the subsidies, the cost-sharing subsidies and whether or not they'll be funded for the next year or two to give some certainty to the markets, and they may be able to tack something else on. The CHIP reauthorization, really, it could go through cleanly and they could do all this attached to another measure, but it's a logical vehicle that they have to vote on pretty soon where they could at least slap some Band-Aids on this.

David: Against all of this background of stuff that's going on in Congress, HHS Secretary Dr. Tom Price has made a request for information. What do you know about that? What's come in? What kinds of things are you hearing? What do you think might happen with any of that stuff?

Jessica: When they started talking about this Repeal, Replace, Repair earlier this year, they talked about doing it in three phases: the reconciliation, then a bunch of regulatory fixes, and then some market reforms to come later. Phase one, the reconciliation, fail. Now it looks like they're going to move onto phase two, which they always wanted to do anyway, but now it becomes even more imperative. Secretary Price issued a request for information from really anyone in the middle of June. There was 30 days to provide comments. The comments were due last Wednesday.

What he asked for was for insurers, agents and brokers, employers, hospitals, anybody that had an interest to provide information for him to hit on four key issues: How could he

[The ShiftShapers Podcast](#) with David Saltzman

## Ep #172: Repeal and Replace Tanked in The Senate.

### Now what? – with Jessica Waltman

improve enrollment and getting consumer information out to people, particularly in the individual and small group market? How could he improve affordability, particularly in the individual and small group markets, but really anywhere? What could he do to reform markets and what adjustments could he make that way relative to ACA rules and other rules that might be hurting the marketplace? Then, also, what could he do to give additional power back to the states, who have always traditionally been the prime regulator of the business of insurance? This is really to carry out the President's executive order that he signed on the first day in office trying to ease the regulatory burden on individuals and employer purchasers of health insurance.

He got a wide range of responses. I can probably give you the link. We could link to it in your show notes. You can read them. They're publicly available on regulations.gov if you are a weirdo like me and you like to read those types of things. You could see what groups like the Chamber of Commerce and the American Cancer Society and NEHU and other groups recommended. I can tell you that there is a wide range of recommendations of things that they could do via regulation to make things easier or smoother.

For those in the industry listening in this podcast, this is the stuff where, nuts and bolts, things might change that could either impact costs slightly or impact compliance requirements slightly, make things possibly easier and more efficient in the years to come.

David: We've got I guess four minutes or so, maybe a little bit longer left. Let me throw out the bomb that people are starting to talk about. You hear this in industry meetings. Nobody really says it out loud, but if you've got a cocktail in your hand, the discussion is, "Is single-payer inevitable?" What's your take on that?

Jessica: I have to say, one of the most disappointing things about everything that's gone on over the last seven, eight months or so to me is what I mentioned before about the Republicans conceding a lot of points and not really communicating and

[The ShiftShapers Podcast](#) with David Saltzman

## **Ep #172: Repeal and Replace Tanked in The Senate.**

### **Now what? – with Jessica Waltman**

explaining themselves. I am very concerned about the haste and disorganization in which they rolled out their efforts and really didn't sell things to the American people correctly. They ceded a lot of ground. For example, the whole concept of high-risk pools. I think that they really sold that very badly. Or age rating, where even states like California before said, when the health reform age rules of three-to-one were implemented, "This is too much too fast." You had the very liberal elected Democratic Insurance Commissioner of California saying, "Whoa, back. These age band rules are causing premiums to rise too steeply in my state."

When they put them into the Better Care Reconciliation Act and the American Health Care Act, returning age bands to just five-to-one versus three-to-one — in many states they were eleven-to-one before the ACA — with no explanation, now it's an age tax. High-risk pools, which, some states they functioned well, some states they didn't, I would be happy to go into a super nerdy discussion about them that no one would want to listen to, so we won't do that, but they weren't the devil that they were made out to be on TV.

Unfortunately, a lot of ground was ceded. I am very concerned that a lot of people that maybe would've been more agreeable to some of these changes now can't do that, or there's going to be a lot of PR work that needs to be done. I don't think single-payer is inevitable, but I do think this whole effort was very damaging to those that support a more free market return to health reform. Maybe we do need a little bit of a cooling-off period, and then hopefully start with some small changes to the individual market and work from there.

But the individual market does need to start functioning a lot better, or I am afraid that people that don't want to get super nerdy about health reform are just going to think that single-payer is inevitable. That in and of itself would be a whole huge debate. We would need a complete power shift in Washington, which of course could come in the next two to four years, but it's not a certainty.

**[The ShiftShapers Podcast](#) with David Saltzman**

## **Ep #172: Repeal and Replace Tanked in The Senate.**

### **Now what? – with Jessica Waltman**

It's very, very expensive. States that have tried it independently have all been unable to come up the financing. I don't know that it's inevitable, but I am really disappointed. I think there's a lot of PR work that needs to be done. It's not just PR. It's explaining that there is a method behind this madness, that some of these policies are not intended to be cruel to people. They're just trying to manage risk. We're trying to be more transparent about costs. Medicaid may need reforms to be sustainable moving forward. There's going to be a lot of explaining that needs to be done that unfortunately was not done over the last few months.

David: I will tell you, as a communications guy, I spend a lot of time screaming at the television set. It's a good thing that I have thick walls and no neighbors who are really close to me, because it is frustrating to watch the amazing inability to message and to be up front with these issues. But that gives us a lot to talk about on our next quarterly visit. With that, I'll say, Jessica, thank you very much. Jessica Waltman, Principal at Forward Health Consulting, we always love speaking with you and we learn so much, so thanks for sharing your expertise.

Jessica: Thanks, and I look forward to talking to you again soon.

The ShiftShapers Podcast is a production of Strategic Vision Publishing and David Saltzman. This podcast may not be reproduced in any form, in whole or in part, without the express written permission of the producers.

All rights reserved.